

Supplemental Memorandum of Decision: 02-20181621
Corporate Income Tax
For the Years 2005, 2006, 2008, 2009, 2010, and 2011

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Memorandum of Decision.

HOLDING

Out-of-State Company incorrectly characterized its refund requests as attributable to federal adjustments; five out of six Out-of-State Company's refund requests were untimely because five of its six amended returns were simply submitted more than three years after the date the original returns were due.

ISSUE

I. Corporate Income Tax - Timeliness of Refund Request.

Authority: IC § 6-3-4-6(b), (c); IC § 6-8.1-9-1(a).

Taxpayer argues that its request for a refund of income tax reported on its 2005 through 2011 amended income tax returns were timely filed.

STATEMENT OF FACTS

Taxpayer is an out-of-state business which files Indiana corporate income tax returns and pays Indiana corporate income tax. In March 2015, Taxpayer filed the amended 2005, 2006, 2008, 2009, 2010, and 2011 (*not* 2007) Indiana corporate income tax returns (Form IT-20X) requesting refunds of income tax paid during those years. Taxpayer sought a cumulative refund of approximately \$200,000.

Upon review, the Indiana Department of Revenue ("Department") processed the returns and denied the refunds. In a series of six letters - each of which was dated February 2018 - the Department explained the reason for denying the refunds.

The amended return was out of statute to refund. Pursuant to IC § 6-8.1-9-1 if a taxpayer has paid more tax than the taxpayer determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. In order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

Taxpayer disagreed with the Department's decision denying the refunds and submitted a protest to that effect. An administrative hearing was scheduled for May 2018. Taxpayer's representatives did not attend or participate in the scheduled May hearing. The Department responded by closing the originally docketed protest. Taxpayer's representatives requested a rehearing on the contested refund issues. The Department granted the request, and a rehearing was conducted December 2018 during which Taxpayer's representatives explained the basis for the protest. This Supplemental Memorandum of Decision results.

I. Corporate Income Tax - Timeliness of Refund Request.

DISCUSSION

The only issue addressed in the Supplemental Memorandum of Decision is whether Taxpayer's amended Indiana corporate income tax returns were timely filed. This decision does not address any substantive issues which may be raised by those returns nor does it address the calculations contained on those returns.

Taxpayer explains that the refund request was triggered by a federal adjustment reducing Taxpayer's adjusted

gross income for 2005 through 2015. The federal adjustment was in response to an Advanced Pricing Agreement entered into between Taxpayer, the Internal Revenue Service ("IRS"), and the Canadian taxing authorities.

The IRS notification regarding the Agreement was dated October 2014. The IRS forwarded Taxpayer an executed copy of the Agreement November 2014.

Taxpayer explains that it filed its Indiana amended returns in March 2015.

Taxpayer subsequently received a federal form 4549-A ("Income Tax Discrepancy Adjustments") dated December 2015 notifying Taxpayer of the specific 2005, 2006, 2008, 2009, 2010, and 2011 federal adjustments.

Taxpayer cited to IC § 6-3-4-6(b), (c) as authority for its position that the Indiana returns- and refund request - satisfied the notification time requirement.

(b) Each taxpayer shall notify the department of any modification as provided in subsection (c) of:

(1) a federal income tax return filed by the taxpayer after January 1, 1978; or

(2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice on the form prescribed by the department within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010.

(c) If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010. (*Effective January 1, 2011 to June 30, 2015*).

Taxpayer characterizes this as an "RAR" (Revenue Agent Report) issue; it isn't. The 4549-A and B RAR notice Taxpayer received was dated December 2015 while the amended returns were postmarked March 2, 2015. The amended returns were not filed in response to the December 2015 federal adjustment because the amended returns were submitted some ten months *before* the date of the federal adjustment.

What Taxpayer characterizes as a RAR issue is simply a three-year statute of limitations issue and is governed by IC § 6-8.1-9-1(a) which provides as follows:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

(1) The due date of the return.

(2) The date of payment.

In Taxpayer's case, the original returns were timely filed. For example, the 2008 original return was filed April 2009 while the 2009 original return was timely filed April 2010 and so on. As pointed out above, Taxpayer's amended returns were dated March 2, 2015. In the case of 2008 through 2009 amended returns, the associated refund requests are untimely as are the 2005 and 2006 refund requests.

Taxpayer's 2010 original return was timely filed April 12, 2011 (due April 18, 2011). The 2010 amended return was filed March 2, 2015. In the case of the amended 2010 return, the associated refund request is also untimely because the refund was requested more than three years after the due date of the original return.

Finally, Taxpayer's 2011 return was timely filed April 13, 2012 (due April 17, 2012). Thus, the three years from April 17, 2012 is April 17, 2015. The 2011 amended return was filed March 2, 2015. In the case of the amended 2011 return, the associated refund request is not untimely because the refund was requested less than three years after the due date of the original return. In other words, Taxpayer timely amended its 2011 return pursuant to IC § 6-8.1-9-1(a).

In short, Taxpayer's 2005, 2006, 2008, 2009, and 2010 refunds were untimely. The 2011 refund request was not.

FINDING

On the sole issue of whether Taxpayer's amended 2011 returns was timely filed, Taxpayer's protest is sustained.

In all other respects, Taxpayer's protest is respectfully denied.

August 13, 2019

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